
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Alejandro Schwartzman, et al.

Attorney Docket No.: CISC203/60241

Application No.: 09/846,849

Examiner: Joseph G. Ustaris

Filed: May 02, 2001

Group: 2424

Title: METHODS AND APPARATUS FOR
NETWORK CONGESTION CONTROL

Confirmation: 5618

CERTIFICATE OF EFS-WEB TRANSMISSION

I hereby certify that this correspondence is being transmitted electronically through EFS-WEB to the Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450 on June 15, 2009.

Signed: /Latonia Ervin/
Latonia Ervin

APPLICATION FOR PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Notice of Allowance, mailing date March 16, 2009, and in accordance with 37 C.F.R. §1.705, Applicants respectfully request reconsideration of the period of adjustment. Specifically, Applicants request that the patent term be additionally adjusted under 35 USC § 154(b)(1)(B) and 37 C.F.R. §§ 1.702(b) and § 1.703(b) based on failure to issue the patent within three years of the actual filing date of the application. Applicants request that the following period be added to the 920 days calculated by the PTO:

No. of Days to Be Added = 05/02/04 (3 years after 05/02/01 filing date) + 11/17/06 (Request for Continuation date) = 929.

Statement of Fact, as Required by 37 C.F.R. §1.705(b)(2)

Applicants respectfully submit that the patent term should be adjusted to account for a one-day term extension for every day greater than three years after the filing date that it takes for the patent to issue (or until the filing of a Request for Continued Examination) under 35 USC § 154(b)(1)(B) and 37 C.F.R. §§1.702(b) and §1.703(b) in view of the decision in *Wyeth v. Dudas*, District Court of Columbia (D.D.C. 2008).

Under *Wyeth*, the proper formula for determining PTA is: delay under 35 USC § 154(b)(1)(A) ("A delay") plus delay under 35 USC § 154(b)(1)(B) ("B delay") less

(any part of A delay that overlaps with B delay) less applicant's delay. In the present application, this is as follows:

1148 days A delay + B delay 929 days (days after 3 years until the filing of a Request for Continuation) – 478 days overlap between A delay and B delay – 20 days Applicants' delay = days 1579 B delay.

In view of the foregoing, it is respectfully submitted that the patent term be adjusted under 35 USC § 154(b)(1)(B) and 37 C.F.R. §§1.702(b) and §1.703(b).

This patent application is not subject to a terminal disclaimer. Applicants submit that there were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination.

The Commissioner is hereby authorized to charge the fee for filing a request for reconsideration of the patent term adjustment pursuant to §1.705 set forth in §1.18(e) of \$200.00 and any other fees which may be required or credit any overpayment to Deposit Account No. 504480 (Order No CISC203).

Applicants respectfully request that the patent term adjustment be reconsidered.

Respectfully submitted,
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